

## Nuclear Regulatory Commission

## § 2.323

the presiding officer retains final authority on the issue for which the alternate member was designated; or

(4) Discovery master to rule on the matters specified in § 2.1018(a)(2).

(b) The presiding officer may, as a matter of discretion, informally seek the assistance of members of the Atomic Safety and Licensing Board Panel to brief the presiding officer on the general technical background of subjects involving complex issues that the presiding officer might otherwise have difficulty in quickly grasping. These briefings take place before the hearing on the subject involved and supplement the reading and study undertaken by the presiding officer. They are not subject to the procedures described in § 2.313.

### § 2.323 Motions.

(a) *Scope and general requirements*—(1) *Applicability to § 2.309(c)*. Section 2.309 motions for new or amended contentions filed after the deadline in § 2.309(b) are not subject to the requirements of this section. For the purposes of this section the term “all motions” includes any motion *except* § 2.309 motions for new or amended contentions filed after the deadline.

(2) *Presentation and disposition*. All motions must be addressed to the Commission or other designated presiding officer. All motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

(b) *Form and content*. Unless made orally on-the-record during a hearing, or the presiding officer directs otherwise, or under the provisions of subpart N of this part, a motion must be in writing, state with particularity the grounds and the relief sought, be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order. A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's

efforts to resolve the issue(s) have been unsuccessful.

(c) *Answers to motions*. Within ten (10) days after service of a written motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

(d) *Accuracy in filing*. All parties are obligated, in their filings before the presiding officer and the Commission, to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citations to the record. Failure to do so may result in appropriate sanctions, including striking a matter from the record or, in extreme circumstances, dismissal of the party.

(e) *Motions for reconsideration*. Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within ten (10) days of the action for which reconsideration is requested. The motion and any responses to the motion are limited to ten (10) pages.

(f) *Referral and certifications to the Commission*. (1) If, in the judgment of the presiding officer, the presiding officer's decision raises significant and novel legal or policy issues, or prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, then the presiding officer may promptly refer the ruling to the Commission. This standard also applies to matters certified to the Commission. The presiding officer shall notify the parties of the referral or certification either by

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announcement on-the-record or by written notice if the hearing is not in session.

(2) A party may petition the presiding officer to certify a question to the Commission for early review. The presiding officer shall apply the criteria in § 2.341(f)(1) in determining whether to grant the petition for certification. No motion for reconsideration of the presiding officer's ruling on a petition for certification will be entertained.

(g) *Effect of filing a motion, petition, or certification of question to the Commission.* Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.

(h) *Motions to compel discovery.* Parties may file answers to motions to compel discovery in accordance with paragraph (c) of this section. The presiding officer, in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing. If responses are given over the telephone, the presiding officer shall issue a written order on the motion summarizing the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter effective at the time of the ruling, if the terms of the ruling are incorporated in the subsequent written order.

[69 FR 2236, Jan. 14, 2004, as amended at 77 FR 46593, Aug. 3, 2012]

### § 2.324 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

### § 2.325 Burden of proof.

Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.

### § 2.326 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence

will not be granted unless the following criteria are satisfied:

(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b).

[69 FR 2236, Jan. 14, 2004, as amended at 77 FR 46593, Aug. 3, 2012]

### § 2.327 Official recording; transcript.

(a) *Recording hearings.* A hearing will be recorded stenographically or by other means under the supervision of the presiding officer. If the hearing is recorded on videotape or some other